

REMARKS/ARGUMENTS

Claims 37-45 are now pending.

At the outset, Applicants would like to thank Examiner McGarry for indicating that Claim 33 is allowable. In the amendment submitted above, Claim 33 has been rewritten in independent form as Claim 36. Accordingly, Applicants submit that Claim 36 and Claim 37, which depends from Claim 36, are allowable. For that reason, those claims will not be discussed further below.

The rejection of Claims 2-7 and 10-32 under 35 U.S.C. §102(e) over U.S. 5,948,761 (hereinafter referred to as "U.S. '761") is believed to be obviated by the amendment submitted above.

Claims 2-7 and 10-32 have been canceled. In addition, U.S. '761 fails to describe the cDNA consisting of the base sequence recited in Claims 38-41 or the polypeptide consisting of the amino acid sequence recited in Claims 42-45. Those sequences relate to the BNP-26 and BNP-32 sequences described in the present specification. U.S. '761 does not describe the BNP-26 and BNP-32 polypeptides or cDNAs encoding the same. Certainly, there is no direct and explicit teaching of such sequences in that patent. At columns 4-5 of U.S. '761, there is a general formula which illustrates many peptide sequences. Referring to MPEP §2131.02, a generic formula only anticipates a claimed species when the species can be "at once envisaged" from the formula. One reading the general formula described at columns 4-5 of U.S. '761 would not at once envisage the claimed DNA and peptide sequences, because the general formula embraces so many possible species thereof. For that reason, Claims 38-45 are not anticipated by U.S. '761. Accordingly, withdrawal of this ground of rejection is respectfully requested.

The objection to Claims 27 and 34 under 35 U.S.C. §132 and the rejection of those claims under 35 U.S.C. §112, first paragraph, are believed to be obviated by the cancellation

Application No. 08/192,800  
Reply to Office Action of January 30, 2003

of those claims in the amendment submitted above. Newly added Claims 36-43 are supported by the specification as described above. Accordingly, withdrawal of the objection and the rejection is respectfully requested.

An Information Disclosure Statement (IDS) was submitted on December 17, 2002. An indication that the Examiner considered the IDS in the form of an initialed PTO Form-1449 is respectfully requested in the next communication from the Office.

Applicants submit that the present application is in condition for allowance. Early notice to this effect is earnestly solicited.


Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



22850

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
NFO/JK/cja

  
\_\_\_\_\_  
Norman F. Oblon  
Attorney of Record  
Registration No. 24,618

James J. Kelly, PhD  
Registration No. 41,504

I:\ATTY\JK\147303US-AM.DOC